

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE:

CHAPTER 13

JOANNE CONNELLY

Case No.: 20-70347-reg

Debtor(s) .

-----X

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Richard S. Feinsilver, Esq., a motion pursuant to Bankruptcy Rule 3007 will be made as set forth below:

JUDGE: Robert E. Grossman

RETURN DATE AND TIME: May 4, 2020, 9:30 AM

PLACE: U.S. Bankruptcy Court
290 Federal Plaza, Room 860
Central Islip, New York 11722

BASIS FOR APPLICATION: Objection to Proof of Claim 9-1
filed by Deutsche Bank/PHH Mortgage

RELIEF REQUESTED: (a) Reduce Claim 9-1 filed by
Deutsche Bank/PHH Mortgage; and (b)
Other relief that may be deemed
just and proper.

Dated: Carle Place, New York
March 11, 2020

s/Richard S. Feinsilver

RICHARD S. FEINSILVER
Attorney for Debtor
One Old Country Road, Suite 125
Carle Place, New York 11514
516-873-6330

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

CHAPTER 13

IN RE:

JOANNE CONNELLY

Case No.: 20-70347-reg

Debtor(s) .

-----X

AFFIRMATION IN SUPPORT

RICHARD FEINSILVER, an attorney duly admitted to practice
before this Court, affirms the following:

1. I am the attorney for the above captioned debtor and I am
fully familiar with the facts and circumstances surrounding this case.

2. This affirmation is made pursuant to Bankruptcy Rule 3007,
in support of debtor's objection to object to Proof of Claim #9-1
submitted by Deutsche Bank/PHH Mortgage (hereinafter referred to as
"PHH").

3. The debtor filed the instant petition for relief on January
15, 2020.

4. PHH filed its proof of claim on or about February 12, 2020,
alleging pre-petition mortgage arrears in the amount of \$46,638.34
(Exhibit "A").

5. Upon information and belief, the subject mortgage was
transferred from Ocwen to PHH sometime during 2019.

6. Upon information and belief, the attachment to the proof of
claim alleges that the debtor did not remit a single mortgage payment
to either PHH or Ocwen during calendar year 2019.

7. The debtor does not deny that she has a financial obligation to this creditor. The debtor's objection to this claim is premised upon (a) the fact that the debtor remitted a minimum of six (6) post petition mortgage payments to Ocwen/PHH during the prosecution of her prior Chapter 13 case during 2019 which have not been credited; and (b) the calculation of the escrow deficiency contained in the proof of claim contains a double counting of the tax escrows which are a portion of the debtor's pre-petition mortgage arrears during the applicable period. (Exhibit B)

8. Absent production proof to the contrary by Ocwen/PHH, the subject claim should be reduced by a minimum of \$16,500.00, including the double counting of escrow

WHEREFORE, affirmant requests that claim 9-1 filed by Onemain Financial Group LLC be reduced to \$31,138.34 or less, and that this Court grant such other and further relief as it deems just and proper.

Dated: Carle Place, New York
March 11, 2020

s/Richard S. Feinsilver

RICHARD S. FEINSILVER, Esq.
One Old Country Road, Suite 125
Carle Place, New York 11514
(516) 873-6330

EXHIBIT A

Fill in this information to identify the case:

Debtor 1 Joanne P Connelly

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of NY
(State)

Case number 8-20-70347-reg

Official Form 410**Proof of Claim**

04/19

Read the instructions before filling out this form. Use this form to make a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

The law requires that filers **must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-FR1

Name of the current creditor (the person or entity to be paid for this claim) _____

Other names the creditor used with the debtor PHH Mortgage Corporation

2. **Has this claim been acquired from someone else?** ☒ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	PHH Mortgage Corporation Name Attn: Bankruptcy Department PO Box 24605 Number Street West Palm Beach, FL 33416-4605 City State ZIP Code Contact phone <u>(888) 689-7367</u> Contact email <u>BKTrusteeQueries@ocwen.com</u>	PHH Mortgage Services Name Mailstop SBRP - PO Box 5469 Number Street Mt. Laurel, NJ 08054 City State ZIP Code Contact phone <u>(888) 750-2518</u> Contact email <u>BKTrusteeQueries@ocwen.com</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** ☒ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** ☒ No
☐ Yes. Who made the earlier filing? _____

Debtor 1 Joanne P Connelly
 First Name Middle Name Last Name

Case number 8-20-70347-reg

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6.	Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>4 0 4 3</u>
7.	How much is the claim? <u>\$ 431995.51</u> For leases state only the amount of default.	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8.	What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. <u>Money Loaned</u>	
9.	Is all or part of the claim secured? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input checked="" type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: <u>Mortgage / Promissory Note</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: <u>\$ 431995.51</u> Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: <u>\$ 46638.34</u> Annual Interest Rate (when case was filed) <u>2.00000</u> % <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10.	Is this claim based on a lease? <input type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11.	Does this claim involve a right to setoff? <input type="checkbox"/> No <input type="checkbox"/> Yes. Explain: _____	

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/1/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/12/2020
MM / DD / YYYY

/s/ Stephani A. Schendlinger

Signature

Print the name of the person who is completing and signing this claim:

Name Stephani A. Schendlinger
First name Middle name Last name

Title Authorized Agent for Secured Creditor

Company Robertson, Anschultz, & Schnied, P.L.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 6409 Congress Avenue, Suite 100
Number Street

Boca Raton, Florida 33487
City State ZIP Code

Contact phone 561-241-6901 Email sschendlinger@rasboriskin.com

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information		Part 2: Total Debt Calculation		Part 3: Arrearage as of Date of the Petition		Part 4: Monthly Mortgage Payment	
Case Number:	<u>8-20-70347-reg</u>	Principal balance:	<u>376094.47</u>	Principal & interest due:	<u>19468.40</u>	Principal & interest:	<u>1145.20</u>
Debtor 1:	<u>Joanne P Connelly</u>	Deferred Principal:	<u>22221.37</u>	Pre-petition fees due:	<u>571.63</u>	Monthly escrow:	<u>1282.95</u>
Debtor 2:		Interest due:	<u>10944.45</u>	Escrow deficiency for funds advanced:	<u>22163.59</u>	Private mortgage insurance:	<u>0</u>
Last 4 digits to identify:	<u>4043</u>	Fees, costs due:	<u>571.63</u>	Projected escrow shortage:	<u>4434.72</u>	Optional insurance:	<u>0</u>
Creditor:	<u>Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-FR1</u>	Escrow deficiency for funds advanced:	<u>22163.59</u>	Less funds on hand:	<u>0.00</u>	Total monthly payment:	<u>2428.15</u>
Servicer:	<u>PHH Mortgage Corporation</u>	Less funds on hand:	<u>0.00</u>	Total pre-petition arrearage:	<u>46638.34</u>	Annual interest rate:	<u>2.000000</u>
Fixed accrual/daily simple interest/other:	<u>Fixed Accrual</u>	Total debt:	<u>431995.51</u>				

Part 5: Loan Payment History from First Date of Default 09/01/2018

PART 5 BEGINS ON THE NEXT PAGE

Case 8-20-70347-reg Claim 9 Filed 02/12/20 Desc Main Document Page 5 of 24

Mortgage Proof of Claim Attachment: PART 5

(04/19)

Case number: 8-20-70347-reg

Debtor: Joanne P Connelly

Part 5: Loan payment History from First Date of Default

A. Date	B. Contractual payment amount	C. Funds received	D. Amount incurred	E. Description	F. Contractual due date	G. Prin, int & esc past due balance	H. Amount to principal	I. Amount to interest	J. Amount to escrow	K. Amount to fees or charges	L. Unapplied funds	M. Principal balance	N. Accrued interest balance	O. Escrow balance	P. Fees / charges balance	Q. Unapplied funds balance
				Opening Balance												
8/1/2018	\$1,145.20	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$1,145.20	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$627.71	-\$13,606.91	\$0.00	\$0.00
9/1/2018	\$2,400.87	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$3,546.07	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$1,254.53	-\$13,606.91	\$0.00	\$0.00
10/1/2018	\$2,400.87	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$5,946.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$1,881.35	-\$13,606.91	\$0.00	\$0.00
11/1/2018	\$2,400.87	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$8,347.81	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$2,508.17	-\$13,606.91	\$0.00	\$0.00
12/1/2018	\$1,616.40	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$9,964.21	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$3,134.99	-\$13,606.91	\$0.00	\$0.00
12/12/2018	\$0.00	\$0.00	\$14.50	INSPECTION FEE	8/1/2018	\$9,964.21	\$0.00	\$0.00	\$0.00	\$14.50	\$0.00	\$376,611.96	\$3,134.99	-\$13,606.91	\$14.50	\$0.00
12/17/2018	\$0.00	\$0.00	\$22.90	Late Charge Assessment	8/1/2018	\$9,964.21	\$0.00	\$0.00	\$0.00	\$22.90	\$0.00	\$376,611.96	\$3,134.99	-\$13,606.91	\$37.40	\$0.00
1/1/2019	\$1,616.40	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$11,580.61	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$3,761.81	-\$13,606.91	\$37.40	\$0.00
1/14/2019	\$0.00	\$0.00	\$14.50	INSPECTION FEE	8/1/2018	\$11,580.61	\$0.00	\$0.00	\$0.00	\$14.50	\$0.00	\$376,611.96	\$3,761.81	-\$13,606.91	\$51.90	\$0.00
2/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$13,933.28	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$4,388.63	-\$13,606.91	\$51.90	\$0.00
2/12/2019	\$0.00	\$0.00	\$250.00	BK ATTY FEE	8/1/2018	\$13,933.28	\$0.00	\$0.00	\$0.00	\$250.00	\$0.00	\$376,611.96	\$4,388.63	-\$13,606.91	\$301.90	\$0.00
2/12/2019	\$0.00	\$0.00	\$58.95	PROOF CLAIM - BK	8/1/2018	\$13,933.28	\$0.00	\$0.00	\$0.00	\$58.95	\$0.00	\$376,611.96	\$4,388.63	-\$13,606.91	\$360.85	\$0.00
2/21/2019	\$0.00	\$0.00	\$150.00	PROOF CLAIM - BK	8/1/2018	\$13,933.28	\$0.00	\$0.00	\$0.00	\$150.00	\$0.00	\$376,611.96	\$4,388.63	-\$13,606.91	\$510.85	\$0.00
3/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$16,285.95	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$5,015.45	-\$13,606.91	\$510.85	\$0.00
4/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$18,638.62	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$5,642.27	-\$13,606.91	\$510.85	\$0.00
5/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$20,991.29	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$6,269.09	-\$13,606.91	\$510.85	\$0.00
6/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$23,343.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$6,895.91	-\$13,606.91	\$510.85	\$0.00
7/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$25,696.63	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$7,522.73	-\$13,606.91	\$510.85	\$0.00
8/1/2019	\$2,352.67	\$0.00	\$0.00	Monthly Payment	8/1/2018	\$28,049.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,611.96	\$8,149.55	-\$13,606.91	\$510.85	\$0.00
8/5/2019	\$0.00	\$1,145.20	\$0.00	Payment	9/1/2018	\$26,904.10	\$517.49	\$627.71	\$0.00	\$0.00	\$0.00	\$376,094.47	\$7,521.84	-\$13,606.91	\$510.85	\$0.00
9/1/2019	\$2,400.01	\$0.00	\$0.00	Monthly Payment	9/1/2018	\$29,304.11	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$8,148.66	-\$13,606.91	\$510.85	\$0.00
10/1/2019	\$2,400.01	\$0.00	\$0.00	Monthly Payment	9/1/2018	\$31,704.12	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$8,775.48	-\$13,606.91	\$510.85	\$0.00
11/1/2019	\$2,400.01	\$0.00	\$0.00	Monthly Payment	9/1/2018	\$34,104.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$9,402.30	-\$13,606.91	\$510.85	\$0.00
11/18/2019	\$0.00	\$0.00	\$22.89	Late Charge Assessment	9/1/2018	\$34,104.13	\$0.00	\$0.00	\$0.00	\$22.89	\$0.00	\$376,094.47	\$9,402.30	-\$13,606.91	\$533.74	\$0.00
12/1/2019	\$2,400.01	\$0.00	\$0.00	Monthly Payment	9/1/2018	\$36,504.14	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$10,029.12	-\$13,606.91	\$533.74	\$0.00
12/9/2019	\$0.00	\$0.00	\$15.00	INSPECTION FEE	9/1/2018	\$36,504.14	\$0.00	\$0.00	\$0.00	\$15.00	\$0.00	\$376,094.47	\$10,029.12	-\$13,606.91	\$548.74	\$0.00
12/16/2019	\$0.00	\$0.00	\$22.89	Late Charge Assessment	9/1/2018	\$36,504.14	\$0.00	\$0.00	\$0.00	\$22.89	\$0.00	\$376,094.47	\$10,029.12	-\$13,606.91	\$571.63	\$0.00
12/20/2019	\$0.00	\$0.00	\$6,838.68	Escrow Disbursement	9/1/2018	\$36,504.14	\$0.00	\$0.00	\$-6,838.68	\$0.00	\$0.00	\$376,094.47	\$10,029.12	-\$20,445.59	\$571.63	\$0.00
1/1/2020	\$2,400.01	\$0.00	\$0.00	Monthly Payment	9/1/2018	\$38,904.15	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$10,655.94	-\$20,445.59	\$571.63	\$0.00
1/6/2020	\$0.00	\$0.00	\$-1,718.00	Escrow Disbursement	9/1/2018	\$38,904.15	\$0.00	\$0.00	\$-1,718.00	\$0.00	\$0.00	\$376,094.47	\$10,655.94	-\$22,163.59	\$571.63	\$0.00
1/15/2020	\$0.00	\$0.00	\$288.51	Accrued Interest for BK Filing	9/1/2018	\$38,904.15	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$376,094.47	\$10,944.45	-\$22,163.59	\$571.63	\$0.00

EXHIBIT B

Ocwen Loan Servicing

Billing Payment

\$2,400.87

Mar 12

Santander

Lauren

\$466.11

Pending

Debit Card Purchase - IL...

~~\$330.00~~

Done



Cancel

Connolly
19-70323
Arb/mtz
March 2019

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X CHAPTER 13
IN RE:

JOANNE CONNELLY

Case No.: 20-70347-reg

Debtor.

AFFIRMATION OF SERVICE

-----X

The undersigned attorney, duly admitted to practice before this Court, affirms the following to be true under the penalties of perjury:

1. That he is the attorney for the debtor in the instant case.
2. That on the 12th day of December 2019, your affiant served a copy of the within Notice of Motion and Affirmation in Support upon:

Michael Macco, Esq., 2950 Expressway Drive South, S 109, Islandia NY 11749

PHH Mortgage Corporation, Attn: Bankruptcy Dept, Box 24605, West Palm Beach FL 33416-4605

PHH Mortgage Services, Mailstop SBRP, Box 5469 MT Laurel NJ 08054
Robertson Anschultz and Schneid PL. Attn Stephani Schendlinger, 6409 Congress Avenue, Suite 100, Boca Raton FL 33487

RAS BORISKIN, 900 Merchants Concourse, Suite 310, Westbury NY 11590

the address(es) designated by said attorney and party for that purpose by depositing a true copy of same to each attorney and party, enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: March 11, 2020
Carle Place, New York

s/Richard S. Feinsilver

RICHARD S. FEINSILVER